IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/02/2003

CORAM

THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

SA.No.1331 of 1990

The City Union Bank Limited
Thirukattupalli Branch
by Its Branch Manager ... Appellant

-Vs-

C. Thangarajan ... Respondent

!For Appellant: Mr. S. Vijayaraghavan

^For Respondent: Mr. a. Jegadishan

Appeal filed against the judgement and decree of the learned District Judge of West Thanjavur at Thanjavur, dated 26.6.1990, made in AS. No.11 of 1989, confirming the judgement and decree of the trial court, dated 15.12.1988, made in OS.No.119 of 1986, on the file of the Subordinate Judge of Thanjavur.

:JUDGEMENT

1.The City Union Bank Limited, Thirukattupalli Branch, filed a suit in OS.No.193/1986, before the District Munsif Court, Thiruvaiyaru, against (1) Kumaraswamy, (2) Chellapappa and (3) Thangaraj, for recovery of a sum of Rs.2568.15/-, with future interest.
2.The case of the plaintiff is that the defendant along with others executed a promissory note in favour of the plaintiff/Bank on 19.11.1 983 in Thirukkattupalli for Rs.4,000/-, agreeing to repay the same together with interest at Rs.16.50/- per cent per annum (compound interest) with quarterly rests. The loan was advanced for commercial purposes. The liability of the defendants interse is joint and several.
3.The 3rd defendant filed a written statement, wherein, it is stated that the document relied upon by the Bank is not a promissory note, so as to clothe him with any liability and the defendant did not borrow any amount from the plaintiff. The defendant has not participated in any transactions with the plaintiff, regarding the borrowing of the amount and payment of dues to the Bank.
4.The 3rd defendant, viz. C. Thangaraj, filed a suit in OS.No.193/198 6, before the District Munsif Court, Thiruvaiyaru, against the City Union Bank, for the recovery of Rs.11,053/-, together with interest thereon, being the amount due under the Fixed Deposit Receipt No.127288 , dated 3.8.1985 and also

for Rs.10,000/-, towards damages and compensation for the loss of reputation in public and humiliation done to the plaintiff. That in the said suit, the plaintiff has stated that he was a senior Tamil Pandit in the Government High School and also a Mirasdar of having 4 acres of land. He claimed that he is a respectable citizen with an unblemished character in his life. He was having a savings bank account in the City Union Bank Limited in SB.No.1152 from the year 1973 and the 2nd defendant, requested him on several occasions to deposit amounts in his Bank and he obliged him, by making a deposit of Rs.10,000/- on 15.3.1985 in fixed deposit account for one year. The plaintiff also deposited another sum of Rs.10,000/- on 3.8.1985 in FDR.No.127288. The plaintiff got back Rs.10,850/-, that being the amount on the first fixed deposit dated 15.3.1985. In respect of the second deposit in FDR.No. 12728, the plaintiff handed over the fixed deposit receipt to the Vijaya Bank, Thanjavur on 2.8.1986 for the realisation of the amount from the defendants and the Bank dishonoured the fixed deposit receipt on the ground that the defendants are having a lien over the fixed deposit amount of the plaintiff. The defendant's refusal to refund the matured fixed deposit amount is not proper. On the receipt of the notice, Bank gave a reply, without making the payment. The plaintiff contended that there was no express or implied contractual agreement between the plaintiff and the defendants, at any point of time, to have a lien on the fixed deposit amount and therefore, the defendant/Bank cannot exercise any lien over the fixed deposit amount of the plaintiff. As the defendant did not honour the fixed deposit receipt through Vijaya Bank, the plaintiff felt that his name and reputation in the public were completely damaged and he was subjected to humiliation, victimisation, mental agony and ignominy in the estimation of the people, living near him and also the staff of the Vijaya Bank. The plaintiff made a claim of Rs.10,0 00/-, being the damages for the loss of reputation.

5.The City Union Bank Limited filed a written statement, wherein, it is sated that the plaintiff along with one Kumaraswamy and his wife Chellapappa obtained a loan of Rs.4,000/- and they have all executed a promissory note on 19.11.1983 to repay the sa id amount together with interest and the plaintiff is the co-promissor, liable to repay the said amount with interest. The loan amount was not paid and there was no response to pay the amount also and therefore, the defendant filed a suit in OS.No.193/1986, before the District Munsif Court, Thiruvaiyaru. In the said suit, the other two defendants submitted to a decree and the plaintiff alone was contesting the suit. The defendant accepted the fixed deposit account of the plaintiff in FDR.No.127288 and the interest is payable quarterly and the same has been credited in the SB Account of the plaintiff once in 3 months in SB.A/c.No.11 52. It is further stated that as on 3.8.1986, the amount payable in the fixed deposit was Rs.10,000/- only. The Bank is having a lien over the amount covered by the fixed deposit of the plaintiff. The Bank is also entitled to hold the deposit, until the debt due from the plaintiff is discharged. The bankers' lien is in the form of general lien and the Bank has got a general lien, on all securities deposited with them by a customer, unless there is an express contract or circumstance that shows an implied contract inconsistent with the general lien. The Bank admits the presentation of the fixed deposit receipt with the Vijaya Bank, for collection, and as the plaintiff has not paid the amount due to the Bank, the amount payable under the fixed deposit account was withheld as a lien and the communication sent to the Vijaya Bank would not

amount to dishonouring of the fixed deposit. The Bank had expressed its willingness to pay the balance amount due after the settlement of lien account of the plaintiff. But, however, the plaintiff went to the extent of denying his liability to the lien of the Bank. The Bank also denied its liability in respect of the damages claimed by the plaintiff and prayed for dismissal of the suit.

6.The suit filed by the Bank, before the District Munsif Court, Thiruvaiyaru, was transferred to the Sub Court, Thanjavur and renumbered as OS.No.205/1987 and was tried along with OS.No.119/1986. Evidence was let in in OS.No.205/1987, which is the suit filed by the Bank. The Bank had examined one witness on its side and marked Exs.A1 to A7. The defendant examined himself as DW.1 and marked Exs.B1 to B11.

7.The trial court, after taking into consideration all the aspects of the case, came to the conclusion that the defendant along with others had executed the suit promissory note in favour of the plaintiff/ Bank and decreed the suit. The trial court further observed that the Bank has got a lien in respect of the property of its borrowers. But, however, when the debtor had got a fixed deposit and that he owes amount to the Bank, both of them have got to be taken into consideration and after deducting the amount, due to the Bank, the Bank is bound to return the balance amount to its customer. Instead of adopting the said course, the Bank has filed the suit for recovery of the amount, in OS.No.193.1986, which was transferred and renumbered as OS.No.205 /1987 before the Sub Court, Thanjavur and also driven one of the borrowers to file the suit in OS.No.119/1986 for recovery of the amount. The fact that the Bank filed the suit would amount to giving up/ waiving up his right of lien and therefore, the Bank is not entitled to withhold the fixed deposit amount. The trial court also held that the Bank had written a letter to the defendant that even after the filing of the suit, he could get back the amount, but the Bank has come forward with a plea that the fixed deposit amount cannot be returned, till the amount due to the Bank by the others is discharged and therefore, the Bank cannot play such a role. It was also held that the defendant made arrangements to get back the fixed deposit amount and the same was negatived on the ground that the Bank refused to honour the fixed deposit account on the ground that the Bank has got a lien and when the said fact was known to the Branch Manager and others, they have underestimated the defendant and therefore, his name was lowered down before them and therefore, the Bank is liable to pay a sum of Rs.2,000/- towards damages for the mental pain and anguish caused to him. Ultimately, the suit filed by the Bank in OS.No.205/1987 was decreed. The suit filed by Thangaraj in OS.No.119/1986 was also decreed to the extent of Rs.13,055/- together with interest at the rate of 8.5% per annum and Rs.11,055/- from the date of the plaint and also granted a decree for damages of Rs.2,000/- payable together with interest at the rate of 6% per annum from the date of the plaint.

8.Both the Bank and the individual preferred an appeal, against the judgement and decree of the trial court, before the District Court, Thanjavur in AS.No.11/1989 and AS.No.75/1989 respectively and the appellate court confirmed the judgement and decree of the trial court. The appellate court took a view that the Bank had not obtained consent or authorisation letter from Thangaraj to have set off the amount due to the Bank in and out of the fixed deposit account of Thangaraj and in the absence of the same, the Bank cannot exercise a general lien against the defendant. The appellate court also confirmed the

view taken by the trial court that the name and reputation of Thangaraj in the public were damaged and the amount awarded towards damages was confirmed. Ultimately, both the appeals came to be dismissed by judgement and decree dated 26.6.1990. Aggrieved by the same, the Bank has preferred this appeal. But, however, C.Thangaraj has not preferred any appeal, against AS.No.75/1989 and therefore, the judgement and decree passed by the trial court in OS.No.205/1987, confirmed in AS.No.75 /1989 has reached finality.

9.For the borrowing made by one Kumaraswamy with the appellant/Bank, it had obtained a promissory note from Kumaraswamy, Chellapappa and Thangaraj, the respondents herein. But, however, the respondent contended that he has not participated in any transaction with the plaintiff with regard to the alleged borrowing and therefore, he is not liable to pay any amount. The respondent is a reputed Tamil Pandit, owns lands and also a respectable person. The appellant requested the respondent on several occasions to invest amounts in the fixed deposit and the respondent deposited Rs.10,000/- on 15.3.1985 and another sum of Rs.10,000/- on 3.8.1985 and the respondent is also having a savings bank account with the appellant/bank. As far as the first deposit is concerned, the respondent got back the amount on 15.3.1986. But, with regard to the 2nd deposit dated 3.8.1985, when the respondent made arrangements for collection through Vijaya Bank, the same was dishonoured by the appellant, which affected the reputation of the respondent, for which, he laid the suit.

10.It is the contention of the respondent that at the time when he deposited the amount, there was no contract between the appellant and the respondent that the said deposit amount was not made or shown as security for any purpose or for any account and in the absence of the same, the appellant cannot withhold the same for the recovery of non-payment of the amount by the defendants in the other suit.

11.Now, the question is, whether the appellant/Bank is right in withholding the fixed deposit amount of the respondent for the amount due in respect of some other account, in the absence of any agreement or contract to that effect.

12.The learned advocate for the appellant has submitted that the respondent and two others have borrowed amount and jointly executed a promissory note in favour of the Bank and the amount due under the said loan was outstanding and only for the recovery of the same, the appellant/Bank withheld the amount payable to the respondent, in respect of the fixed deposit amount dated 3.8.1985. It is contended that the Bank has got a general lien over all the amounts of the debtors available to their credit in the Bank, even in the absence of any specific or special contract between the parties.

13.To support the general lien of Bankers, the learned advocate for the appellant relied upon Section 171 of the Contract Act, which states, "Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

14.It is submitted that the relationship of banker and customer arises as the result of a contract, express or implied, according to which the customer delivers to the bank money, funds or credits constituting the deposit and the bank assumes obligation to pay out on his demand or order a sum equal to the amount deposited. This arrangement is to the advantage of both the parties,

for the customer receives the benefit of banking facilities and the bank the benefit of the use of the customer's money with or without interest. The moment the money is deposited in the bank, the relation of debtor and creditor comes into existence, the bank being the debtor of the customer.

15.The deposit becomes a loan which merges in the general fund of the bank and becomes the property of the bank. Two rights flow out of the relationship of debtor and creditor, viz. (1) the right of the customer to demand repayment of the amounts due to him if and when he so desire, and (2) the right of the bank to appropriate the monies, funds and securities of the customer coming into its possession in the course of their dealings for repayment of the customer's indebtedness. This later right is known as banker's lien and it rests on the principle of the law merchant that any credit given by a bank to a customer is given on the faith that sufficient monies and securities belonging to the customer will come into the possession of the bank in the due course of further transactions.

16.The right is akin to the right of set-off which obtains between persons occupying the relation of debtor and creditor and between whom there exist mutual demands. As mutuality is essential to the validity of a set-off, it is necessary that before one demand can be set off against another both must mutually exist between the same parties and between them in the same capacity. The mutual nature of the debt and not the mutual nature of the parties should be considered. Debts accruing in different rights cannot be set off against each other. A bank can enforce its lien if mutual demands exist between itself and the customer, that is when they mutually exist between the same parties and between them in the same capacity. It is therefore evident that in order to invoke a lien by the bank, there should exist a mutuality between the bank and the customer and in the absence of the same, the lien cannot be exercised. It is also essential that before one demand can be set off against another both must mutually exist between the same parties and between them in the same capacity. It is the contention of the appellant that the relationship between the appellant and the respondent, the bank being the debtor and the respondent being the creditor exists and at the same time, the respondent along with others also owe money to the bank and therefore, the appellant is entitled to exercise a general lien and deduct the money in and out of the deposit amount of the respondent.

17.Now, the question is, whether the appellant/bank can exercise such a lien, in the absence of any contract or mutual agreement?

18.In Syndicate Bank Vs. Vijaya Kumar and others (AIR-1992-SC-1066), the Supreme Court considered the banker's lien. "Lien is in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract." (Halsbury's Laws of England-Vol.20-II Edition-Page 5 52, para 695)

19.In Chalmers on Bills of Exchange, the meaning of 'Banker's lien' is given as follows:- "A banker's lien on negotiable securities has been judicially defined as "an implied pledge." A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer." By referring to various other matters, the Supreme Court opined, "The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited

by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognised and in the absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted to the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which are deposited by the customer." The above said observation would clearly indicate that the bank has got a general lien in respect of all the securities of its customers, including negotiable instruments and the FDRs.

20.The Supreme Court further held in para 7, "Applying these principles to the case before us we are of the view that undoubtedly the appellant/bank has a lien over the two FDRs. In any event the two letters executed by the judgement debtor on 17.9.1980 created a general lien in favour of the appellant/bank over the two FDRs. Even otherwise having regard to the mercantile custom as judicially recognised the Banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business. The recital in the two letters clearly creates a general lien without giving any room whatsoever for any controversy." In the said case, the judgement debtor himself has given letters, and thereby, the judgement debtor agreed that the deposits and renewals shall remain with the Bank so long as any amount on any account is due to the bank from them. But, however, such an agreement or letter is absent in our case. But, however, the Supreme Court has observed that, "even otherwise, having regard to the mercantile custom as judicially recognised the Banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business."

21.In view of the principles laid down by the Supreme Court, in an unequivocal term, we cannot say that the bank has committed an error in exercising its lien over the respondent's FDR amount, which is lying in the appellant/bank and as per the mercantile practice, the Bank is entitled to exercise a general lien over the FDRs also.

22.The next question that arises for the consideration of this court in this case is that the respondent stood surety for the amount borrowed by Kumaraswamy, for which, the appellant/bank filed a suit for the recovery of a sum of Rs.2,568.15/-, but, whereas the amount of the respondent available with the appellant/bank was Rs.10,000/-. That in the said circumstances, whether the bank is justified in withholding the entire amount is another question to be answered.

23.It is not in dispute that the respondent's fixed deposit amount was Rs.10,000/- and the amount payable by the respondent to the bank in OS.No.205/1987 was only to the extent of Rs.2,568.15/-. It has been held in the case of Brahmayya and Co. Vs. K.P.Thangavelu Nadar and others (1956-Madras-570) that "The lien under Section 171 can be exercised only over property of some one else and not his own property. Thus when goods are deposited with or securities are placed in the custody of a bank it would be correct to speak of the rights of the bank over the security or the goods as a lien because the ownership of the goods or securities would continue to remain

in the customer. But, when moneys are deposited in a bank as a fixed deposit, the ownership of the moneys passes to the bank and the right of the bank over the moneys lodged with it would not be really a lien at all. It would be more correct to speak of it as a right of set off or adjustment."

24.In N.Mohamed Hussain Sahib Vs. The Chartered Bank, Madras and another (AIR-1965-Madras-266), the view taken by this court in 1956Madras-570 was accepted and reiterated. It was further held in para 65 that "Where the bankers have adequate funds in his hands to pay his customer's cheques, dishonours it as in the latter case the banker does not contract to take any steps to maintain his customer's credit or reputation but only to honour the customer's cheques when he has in his hands to the customer's credit funds available for that purpose. But, it is pointed out in the decision that the refusal to honour the customer's cheques while such funds are so available, is in itself so injurious to the customer's credit, if he be a trader, as to entitle him-though no special damage be alleged or proved-not merely to recover nominal charges, but to recover in the shape of damages temperate and reasonable compensation for the injury thus done to his credit."

25.The bank is entitled to exercise a general lien even against the fixed deposit amount of its customer only to the extent for which he is liable. We have already seen that the respondent is liable only to the extent of Rs.2,568.15/-, but whereas the bank was having Rs.10,0 00/- to the credit of the respondent and that therefore, the appellant after deducting the amount due to the respondent, should have returned the balance to the respondent, which the appellant has not done in spite of the suit having been filed by the respondent. But, the appellant/bank had retained the entire fixed deposit amount of the respondent and the same is neither proper nor reasonable. As the respondent being the respected person and had suffered loss of reputation because of the act of the appellant, in not having honoured the collection of FDR amount, the courts below have come to the correct conclusion that the 1st respondent's name was degraded and he was put to shame and therefore, he is entitled to claim damages, which the courts below have fixed at Rs.2,000/- and the same cannot be said either as incorrect or improper and therefore, I am in complete agreement with the decisions rendered by the courts below. Having regard to the facts and circumstances of the case and that though the respondent has not given any specific authorisation or letter in writing to the appellant/bank that he agrees that the deposits shall remain with the bank so long as any amount on any account due to the bank from them, the bank is entitled to exercise its lien, but, it was not properly and legally exercised. Only in the said circumstances, I am also of the view that the courts below have not committed any error, which warrants interference by this court.

26.In the result, the second appeal is dismissed. No costs.

Index: Yes
Web: Yes

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To:

1.The District Judge of West Thanjavur at Thanjavur
2.The Subordinate Judge of Thanjavur

3.The Record Keeper, VR Section, High Court, Madras